

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

LISA A. CERVENY,

Plaintiff,

vs.

ANDREW M. SAUL, Commissioner of  
Social Security,

Defendant.

**8:19CV541**

**MEMORANDUM  
AND ORDER**

This matter is before the court upon Plaintiff's Petition for Attorney's Fees Under 28 U.S.C. § 2412(D) (EAJA). (Filing 21.) Plaintiff's motion (after correction of a mathematical error pointed out by the Commissioner) requests an award of \$3,390.74 for 3.5 hours of work performed in 2019 at an hourly rate of \$205.25 and 12.9 hours of work performed in 2020 at an hourly rate of \$207.16, as well reimbursement of costs for the \$400.00 filing fee to be administered by the Department of Justice and paid from the Judgment Fund. *See* 28 U.S.C. §§ 1920, 2412(a)(1), (d)(1)(A), (d)(2), (d)(4) (Westlaw 2020). The Commissioner does not object to Plaintiff's requested award of attorney fees or reimbursement of the filing fee. (Filing 22.)

The court has determined that Plaintiff was indeed the prevailing party in this action, as the Commissioner's decision was reversed and remanded for further proceedings; the position of the Commissioner was not substantially justified; the application for fees was filed in a timely fashion; and Plaintiff's net worth did not exceed two million dollars when the action was filed. *United States SEC v. Zahareas*, 374 F.3d 624, 630 (8th Cir. 2004); 28 U.S.C. § 2412(d)(1)(A), (2)(B). Plaintiff therefore is entitled to an award of reasonable attorney fees. Further, in accordance with *Astrue v. Ratliff*, 560 U.S. 586 (2010), while the EAJA fee is payable to Plaintiff as the litigant, Defendant concedes that it will "make the payment payable to

Plaintiff's attorney" "if the Commissioner determines that Plaintiff owes no debt subject to offset under the Treasury Offset Program." (Filing 22 at CM/ECF p. 2.)

Accordingly,

IT IS ORDERED:

1. Plaintiff's Petition for Attorney's Fees Under 28 U.S.C. § 2412(D) (EAJA) (Filing 21) in the amount of \$3,390.74 is granted;

2. Plaintiff's request (Filing 21) for reimbursement of the \$400.00 filing fee to be administered by the Department of Justice and paid from the Judgment Fund is granted;

3. The EAJA fee is payable to Plaintiff as the litigant, but with Defendant's agreement, shall be sent to Plaintiff's counsel, Wes Kappelman, at Kappelman Law Firm, P.O. Box 1792, Ames, IA 50010, if the Commissioner determines that Plaintiff owes no debt subject to offset under the Treasury Offset Program; and

4. By separate document, the court shall enter judgment for Plaintiff and against Defendant, providing that Plaintiff is awarded attorney fees in the amount of \$3,390.74 and reimbursement of the \$400.00 filing fee.

DATED this 4th day of November, 2020.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge